

NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION I

CACR06-781

JOSEPH HANDY

February 28, 2007

APPELLANT

V.

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2005-4860]

STATE OF ARKANSAS

HON. WILLARD PROCTOR, JR.,
CIRCUIT JUDGE

APPELLEE

AFFIRMED

Joseph Handy was convicted in a Pulaski County jury trial of first-degree battery, and he was sentenced to 360 months in the Arkansas Department of Correction. On appeal, he argues that the trial court erred in denying his motion for a directed verdict because the State failed to prove that the victim, Curtis Spaight, suffered serious physical injury. We affirm.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel

a conclusion one way or the other beyond suspicion or conjecture. *Id.* When the defendant challenges the sufficiency of the evidence convicting him, the evidence is viewed in the light most favorable to the State. *Id.* The jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Burns v. State*, 323 Ark. 206, 913 S.W.2d 789 (1996).

In pertinent part, Arkansas Code Annotated § 5-13-201(a)(1)(Repl. 2006) provides that a person commits first-degree battery if, “with the purpose of causing serious physical injury to another person, he or she causes serious physical injury to any person by means of a deadly weapon.” The sole issue in this case is whether the State proved that Handy inflicted “serious physical injury” on his victim. In our criminal code, “serious physical injury” is defined as an injury that “creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.” Ark. Code Ann. § 5-1-102(19) (Repl.2006).

Handy argues that the injuries that he inflicted on Spaight do not constitute serious physical injury because the evidence of the scarring “did not rise to the level of ‘disfigurement’” and there was no evidence that there was any “permanent impairment or whether the injuries in Spaight’s eye might resolve.” We disagree.

At trial, Spaight testified that Handy stabbed him just below his left eye. His injuries required surgery, and he was hospitalized “right at five days.” According to

Spaight, as of the trial date, “everything is fuzzy in that eye,” and he was able to see “out of my left eye just fine before this incident.” Spaight further described this impairment as not being able to “make out anybody’s face.” Ophthalmologist Michael Norman Wiggins, who performed surgery on Spaight to repair his tear duct, corroborated Spaight’s testimony. Dr. Wiggins stated that Spaight’s right-eye vision was 20/20 and his left-eye vision was 20/40. He opined that it was possible the injury that Spaight received might have caused the “diminishment in his ability to see out of the left eye.” Dr. Wiggins stated that the surgery was necessary to repair the tear duct to relieve a condition he described as “chronically running eye.”

We note that it is not necessary that the impairment be permanent, but merely “protracted.” In this regard, we believe that the instant case is analogous to *Britt v. State*, 83 Ark. App. 117, 118 S.W.3d 140 (2003), where this court held that an injury resulted in a “protracted” loss of mobility where the victim was unable to walk upon arrival at the emergency room, was still unable to walk at the time of her release from the hospital several days later, and required a course of physical therapy to prevent her injuries from resulting in a permanent loss of mobility. As in *Britt*, medical intervention was required to prevent Spaight from suffering a permanent impairment. Furthermore, there was evidence that Spaight’s vision problems persisted some five months after the stabbing. While we agree with Handy that there was no evidence that the decrease in Spaight’s visual acuity would never resolve, we believe that this case is controlled by *Brown v.*

State, 347 Ark. 308, 65 S.W.3d 394 (2001), which held that an impairment was “protracted” where the victim was hospitalized for nine days, required surgery to remove a portion of her intestine, and had to wear a colostomy bag for three months. In the instant case, Spaight had a five-day hospital stay and his visual impairment persisted some five months after the stabbing and corrective surgery.

Furthermore, we note that there was testimony that Spaight received scars to his face, neck, and hand. These scars were pointed out to the jury. We decline to reverse the jury’s verdict where they had the opportunity to actually see the scars, and all we have on appeal is Handy’s bald assertion that they “did not rise to the level of ‘disfigurement.’”¹ As noted previously, the trial was conducted five months after the stabbing, and for the same reasons that we discussed in regard to the duration of Spaight’s visual impairment, we believe that a jury could find that the disfigurement was “protracted.”

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.

¹ Although not contained in Handy’s addendum, pictures of Spaight’s wounds were introduced into evidence at trial.